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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/722,933

11/26/2003

Asif Q. Khan

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Ryan, Mason & Lewis, LLP  
90 Forest Avenue  
Locust Valley, NY 11560

EXAMINER

O'CONNOR, BRIAN T

ART UNIT

PAPER NUMBER

2619

MAIL DATE

DELIVERY MODE

05/08/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/722,933</p>	<p><b>Applicant(s)</b> KHAN ET AL.</p>	
	<p><b>Examiner</b> BRIAN T. O'CONNOR</p>	<p><b>Art Unit</b> 2619</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 07 April 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-20.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Hassan Kizou/  
Supervisory Patent Examiner, Art Unit 2619

Continuation of 11. does NOT place the application in condition for allowance because: The Examiner maintains the rejection of claims 1-19 under 35 USC 103(a) as unpatentable over Anconetani and claim 20 as unpatentable under 35 USC 103(a) as unpatentable over Anconetani and further in view of Kumar.

Applicant remarks, on page 3, with respect to claim 1 that "Anconetani fails to teach or suggest the limitations of claim 1 directed to at least a second scheduling algorithm different than the first scheduling algorithm".

The Examiner maintains that the context table (202 of Figure 11), as taught by Anconetani, is a second table in a processor and is configured to use a second scheduling algorithm, context logic (204 of Figure 11). The context logic (204 of Figure 11) is different from the calendar logic or first scheduling algorithm (208 of Figure 11). The entries (Tpcr, X, Reset, Qlength, Max of Figure 11) correspond or relate to transmission elements for data blocks to be transmitted (column 9, lines 48-55), for instance the variable Max contains the maximum number of simultaneous calendar entries in the calendar table (first table) and FIFO buffer.

Applicant remarks, on page 3, with respect to claim 1 that "Anconetani at column 9, lines 57-60, clearly indicates that the context table stores context information for all connection assigned to cell schedule 102, even connections which are idle (i.e., those for which no data blocks are to be scheduled). As such, Anconetani also fails to teach or suggest the association of a given one of the transmission elements with a particular one of the entries establishes a scheduling rate for that transmission element. Rather, context table 202 thus appears to provide what is generally referred to in the art as traffic shaping information. See Anconetani at, for example, column 7, lines 33-44, and the present specification at, for example, page 9, lines 7-16."

The Examiner notes that claim 1 defines the invention using a "second table configurable" and "entries corresponding to transmission elements" and that these claim language terms allow the claim to be viewed broadly. Furthermore the claimed invention is defined by the claims and viewed in light of the specification, i.e. limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues, on page 3, with respect to claim 1 that "the recited pointers are particular types of pointers, not simply pointers in general, and the use of Official Notice to attempt to meet these claim elements is believed to be inappropriate" and "the recited first table pointer identifies one of the first and second lists of entries of the first table as having priority over the other of the first and second lists of entries. The recited second table pointer identifies a current one of the second table entries as being eligible for transmission. The Official Notice relates to the general use of pointers 'to identify the packets ready for transmission' and thus fails to meet the particular recited first and second table pointers of claim 1".

The Examiner used Office Notice (MPEP § 2144.03) that the use of pointers is known technique in the art. Support for the use of pointers in the art is found in Gemar (US 6,414,963), see Figure 3 and 12C, Gemar teaches the use of pointers in scheduling (column 19, lines 60-67). Furthermore, Anconetani teaches that the scheduling tables (202, 206 of Figure 13) are built with dynamic linked lists (column 14, lines 44-51). Dynamic linked lists are created with pointers and use pointers to reference particular elements inside their listings.

Applicant argues, on page 4, with respect to claim 1 that "the proffered statement fails to provide sufficient object motivation and is instead a conclusory statement of the sort rejected by both the Federal Circuit and the U. S. Supreme Court, See *KSR v. Teleflex* 127 S. Ct. 1727, 1741 (2007) quoting *In re Kahn* 441 F. 3d 977, 988 (Fed. Cir. 2006)" and "the specific pointer limitations of claim 1 are not met by Anconetani, and the proffered conclusory statement regarding the general use of pointers in memory fails to supplement this fundamental deficiency of Anconetani as applied to claim 1".

The Examiner maintains that the applying of a known technique (pointers) to a known device (scheduling tables) for an improvement to yield a predictable scheduling technique does apply as an obvious variation of Anconetani to employ specific pointers to the scheduling tables of Anconetani.